

(26,403)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 936.

PAUL NEILSON ET AL., PETITIONERS,

vs.

RHINE SHIPPING COMPANY, CLAIMANT OF THE SAIL-  
ING SHIP "RHINE."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Second Circuit.

PAUL NEILSEN et al., Libellants-Appellees,

against

SAILING SHIP "RHINE," RHINE SHIPPING COMPANY, Claimant-Appellant.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States for the Eastern District of New York.

Office Supreme Court, U. S. Filed Mar. 26, 1918. James D. Maher, Clerk.

1 United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,

against \*

SAILING SHIP "RHINE," RHINE SHIPPING COMPANY, Claimant.

*Statement.*

Jan. 2, 1917.—Libel of Paul Neilsen et al. filed.

Jan. 23, 1917.—Answer to Libel filed by Claimant, Rhine Shipping Company.

Mar. 19, 1917.—Case tried before Hon. Van Vechten Veeder, J.

May 16, 1917.—Opinion of Court filed.

Sept. 3, 1917.—Final decree entered.

Sept. 20, 1917.—Notice of Appeal and Assignment of Errors filed by Claimant.

*Libel.*

To the Honorable Judges of the United States District Court for the Eastern District of New York:

In Admiralty.

The libel of Paul Neilsen, et al., in a cause of action, civil and maritime, for balance of wages, against the sailing ship Rhine, and J. E. Ward & Co., owners, and all other owners, respectfully shows and alleges as follows:

2 Action under special rule for seamen to sue without security and pre-payment of fees for enforcement of laws of the United

States, common and statutory, for the protection of health and safety of seamen at sea.

First. Libelant alleges that the sailing ship Rhine, an American vessel of over five hundred tons, engaged in foreign trade, is now within the admiralty and maritime jurisdiction of the United States and this Honorable Court, and is lying at Erie Basin, Brooklyn.

Second. That heretofore your libelant, Paul Neilsen, and nine others, namely, Herman Gusteut, Willy Richardt, John Oettler, August Johnson, Carl Christensen, William Oethoog, Frank Novy, August Jockobites and Otto Koch, signed regular shipping articles at the Port of Buenos Ayres, South America, on October 7, 1916, as A. B. seamen, for a voyage from the Port of Buenos Ayres to be discharged in New York, at the agreed rate of wages of \$25.00 per month each with keep.

Third. Your libelants further allege that in order to get the employment on the ship Rhine it was necessary for them to sign a paper which purports to be an advance note for \$25.00 wages and to be deducted from their wages.

Fourth. Your libelants allege that they did sign said note although they had received nothing in value from the person to whose order said note was made payable and although they owe nothing whatever to said person. That said notes were each for the sum of

3     \$25.00 or one month's pay. That said notes or papers were called to the attention of the American Consul at the Port of Buenos Ayres.

Fifth. That your libelants then went aboard said vessel expecting to be paid said \$25.00, but that your libelants were not paid the \$25.00 at that time or any other time.

Sixth. Your libelants further allege that they all came to the Port of New York on board said vessel, performing their duties in a satisfactory manner, and were discharged at the Port of New York this 28th day of December, 1916, receiving the balance of their wages earned, but the sum of \$25.00 had been deducted from the amount due each seaman. That your libelants have signed under protest for said wages and have not released the owners or vessel from the payment of said \$25.00 to each one of your libelants. That they have demanded the payment of said \$25.00 from the master of said vessel, but that he has refused to give it to your libelants.

Seventh. Your libelants, therefore, allege that there is due and owing them the sum of \$25.00 each, as follows:

Paul Neilsen .....	\$25.00
Herman Gusteut .....	25.00
Willy Richardt .....	25.00
John Oettler .....	25.00
August Johnson .....	25.00
Carl Christensen .....	25.00
William Oethoog .....	25.00
Frank Novy .....	25.00
August Jockobites .....	25.00
Otto Koch .....	25.00

4 Eighth. Your libelants further allege that they have each and severally demanded payment of their wages in full from said vessel, but said wages have been refused and they now claim waiting time at the rate of one day's pay for every day they wait after forty-eight hours from date hereof, and until such time as they are paid in full, in accordance with provisions of the Sections of the United States Statutes applicable thereto.

Ninth. Your libelants further allege that if the signing of the advance note by them constitutes payment at Buenos Ayres, that same was an illegal payment, and that the laws of the United States specifically provide that the payment of such advance wages, if paid, shall not be and is not a defense to the collection of said wages in the Port of New York and the jurisdiction of this Court.

Tenth. That all and singular the matters aforesaid are within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, your libelants pray that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the ship Rhine, and that all persons claiming any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree the payment of your libelants' claims in the sum of \$25.00 each, together with such further sum by way of waiting time or damages as to the Court may seem just and proper, and that said vessel may be sold and condemned to pay the same.

SILAS B. AXTELL,  
*Proctor for Libellant.*

Office and P. O. Address, 1 Broadway, Borough of Manhattan, City of New York.

UNITED STATES OF AMERICA,  
*State and County of New York, ss:*

The undersigned, being duly sworn, deposes and says, each for himself: that he is the libellant in the within action; that he has read the foregoing libel and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

PAUL NEILSEN ET AL.

Sworn to before me this 28th day of December, 1916.

MAURICE K. WISE,  
*Notary Public, New York Co., No. 252.*

Register's No. 8189.

Certificate filed Kings Co. No. 6, Register's No. 3081.

Commission expires March 30, 1918.



*Answer.*

To the Honorable the Judges of the District Court of the United States for the Eastern District of New York:

The answer of Rhine Shipping Company, owner and claimant of the sailing ship Rhine, as proceeded against upon the libel of Paul Neilson, et al., in an alleged cause of wages, civil and maritime, alleges as follows:

First. The claimant admits the allegations of the first article of the libel as of the date of filing of said libel.

Second. The claimant admits the allegations of the second article of the libel.

Third. The claimant admits the allegations of the third article of the libel.

Fourth. The claimant admits the allegations of the fourth article of the libel, except that it denies that the respective libellants received nothing in value from the person to whose order the advance note was made payable, and except that it denies that it has any knowledge or information sufficient to form a belief as to the allegation that the libellants owe nothing whatever to said person.

Fifth. The claimant admits that the libellants went on board the ship Rhine at Buenos Aires and denies that it has any knowledge or information sufficient to form a belief as to the other allegations of the fifth article of the libel.

Sixth. The claimant admits the allegations of the sixth article of the libel, except that it denies that \$25 was deducted from the amount due each seaman, and denies the allegation that the libellants have not released the owners or vessel from the payment of \$25 to each one of the libellants.

Seventh. The claimant denies each and every allegation of the seventh article of the libel.

Eighth. The claimant denies that the libellants are entitled to pay for waiting time, and denies each and every allegation of the eighth article of the libel.

Ninth. The claimant denies each and every allegation of the ninth article of the libel.

Tenth. The claimant admits the allegations of the tenth article of the libel.

Eleventh. Further answering, the claimant alleges as follows:

The respective libellants have received from the claimant, or there has been paid for their account, their full wages for services on the sailing ship Rhine from the time when they respectively signed the articles at Buenos Aires in October, 1916, until they were discharged at New York on or about December 28, 1916. The libellants secured their respective employments on the ship Rhine through shipping masters at Buenos Aires, who charged the libellants a fee for their services, and in order to secure an opportunity to earn wages as seamen on the ship Rhine each of the libellants before signing the shipping articles signed and delivered to said shipping masters or their agents at Buenos Aires a receipt or ticket called an advance note for the sum of \$25 in favor of said

shipping masters. The respective libellants agreed that the amounts named in said receipts should be collected in advance out of the wages which they should earn on said ship Rhine. Before the libellants signed the shipping articles before the American Vice-Consul at Buenos Aires said receipts were presented to said Vice Consul with a demand for payment in the presence of the respective libellants, who thereupon acknowledged their signatures thereto. The Vice-Consul, acting in his official capacity and exercising the powers and duties conferred on him by the statutes of the United States, thereupon entered in the shipping articles an advance of \$25 against the wages which should be earned by the respective libellants, and directed the master of said ship Rhine to honor said receipts or advance notes and to pay the amounts named therein to the persons in whose favor the respective libellants had executed said receipts, and this was done. The respective libellants thereafter signed the shipping articles in the presence of the American Vice Consul with full knowledge of all the facts and circumstances and without protest or objection. If any wages were paid in advance at Buenos Aires this was done upon the advice and direction of the American Vice-Consul at Buenos Aires and at the request of the libellants, and was done within the territorial jurisdiction of the Argentine Republic, and not within the United States or in any place subject to the jurisdiction of the laws of the United States, and was not contrary to any law of the United States.

9 All and singular the premises are true.

Wherefore, the claimant prays that the libel may be dismissed with costs; and for such other and further relief as may be just.

BURLINGHAM, MONTGOMERY & BEECHER,

*Proctors for Claimant.*

STATE OF NEW YORK,

*County of New York, ss:*

Roscoe H. Hupper, being duly sworn, says, that he is a member of the firm of Burlingham, Montgomery & Beecher, and one of the proctors for the claimant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge or information are reports received from the master and agents of the ship Rhine, and that the reason why he makes this verification is that the claimant is a corporation, none of whose officers is within the City of New York.

ROSCOE H. HUPPER.

Sworn to before me this 23rd day of January, 1917.

[SEAL.]

L. J. MATTESON,

*Notary Public, Westchester Co.*

Certificate filed in New York Co.  
N. Y. County Clerk's No. 120.

10

*Stipulation.*

United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,  
against

SAILING SHIP "RHINE," RHINE SHIPPING COMPANY, Claimant.

It is stipulated between the proctors for the respective parties that this suit may be tried on the pleadings and on the following stipulation, and for the purpose of this suit, it is stipulated, with the same effect as if witnesses were called, subject to objections as to relevancy or materiality, as follows:

First. That the articles which the respective libellants signed before the American Vice-Consul at Buenos Ayres and the receipts or advance notes which they respectively signed at Buenos Ayres, or copies thereof certified by the Shipping Commissioner at the Port of New York, shall be received in evidence, and said articles and receipts shall be deemed true and correct as to the wages of said seamen and advances made and as to all matters stated therein.

Second. That the deposition of August Johanson, taken January 2, 1917, shall be received in evidence and that each of the  
11 libellants, if called, would testify to precisely the same effect as the said August Johanson with regard to securing employment on the ship Rhine, signing the receipts and articles and with regard to payment of wages, and that each of the libellants would testify that before securing, and as a means of securing, employment on the ship Rhine it was necessary for him to sign a receipt or advance note for one month's wages and deliver the same to a Shipping Master, which, when delivered, was an assignment out of wages of the amount therein named.

Third. That the master would testify that the shipping of seamen for sailing vessels at Buenos Aires is controlled by Shipping Masters, among whom was Tommy Moore, in whose favor the libellants signed the receipts mentioned in article first of this stipulation; that the master of the ship Rhine, if called, would testify that it would have been impossible to secure a crew for said ship at Buenos Aires except by agreeing to pay one month's wages in advance; that the advance notes which the respective libellants signed at Buenos Aires were presented to the American Vice-Consul at Buenos Aires before the libellants signed the articles, and the advances were noted on said articles by said Vice-Consul; that he was then directed by said Vice-Consul, in the presence of the respective libellants, to honor said receipts or advance notes and to pay the same on account of the wages of the respective libellants, and that pursuant to said direction he paid or caused to be paid the amounts named therein to the persons in whose favor they were executed and to whom they had  
12 been delivered by the respective libellants; that the amounts thus paid at Buenos Ayres were deducted from the wages that



except for such payment would have been due to the respective libellants when they were discharged at New York.

Fourth. That the American Vice Consul at Buenos Aires when he instructed the master of the ship Rhine to honor said advance notes had been duly instructed by the Department of Commerce of the United States to recognize and allow such advances to seamen at Buenos Ayres; that with respect to all matters herein mentioned said Vice-Consul was duly acting in the performance of his regular official duties; that all the transactions herein mentioned took place within the City of Buenos Aires, the Argentine Republic, or as indicated by the evidence.

Fifth. That the Shipping Commissioner at the Port of New York allowed the deductions which were made because of the payments made in advance at Buenos Aires, as shown by the articles; that said Shipping Commissioner has received from the Department of Commerce an opinion or ruling directing the allowance of advances made at foreign ports, and that copies of said opinion or ruling, certified by said Shipping Commissioner, shall be received in evidence as full proof of the matters therein stated; that Sections 236 and 237 of the Consular Regulations of the United States, duly published by the State Department, provide as follows:

13 "236. No Advance Wages.—Except in the case of whaling vessels, it is not lawful to pay any seaman wages before leaving the port at which such seaman may be engaged in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay to any one except an officer authorized by Act of Congress to collect fees for such service, any remuneration for the shipment of a seaman. If any such advance wages or remuneration shall have been paid or contracted for, the Consul, in making up the account of wages due the seaman upon his discharge, will disregard such advance payment or agreement and award to the seaman the amount to which he would be entitled if no such payment or agreement had been made. Nor should Consuls permit the statute to be evaded indirectly, as by part payment in advance and then stating rate of wages too small. R. S., Secs. 4532, 4533; 23 Stat. L. 55, Sec. 10; 24 Id. 80, Sec. 3; 27 Fed. Rep. 764."

"237. Advances to Seamen Shipped in Foreign Ports.—The shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction, of the Act referred to in the next preceding paragraph. The final clause of the Act, which declares that this section shall apply as well to foreign vessels as to those of the United States, and that in case of violation a clearance shall be refused them, is a clear indication that Congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in the United States alone.

14 The provision of the statute as to payment of advance wages is not intended to apply to seamen shipped in foreign ports. In the settlement of wages due seamen in such cases, therefore, con-

ular officers will take into account what has been paid in advance.  
22 Fed. Rep. 734."

Dated, New York, February 7th, 1917.

SILAS B. AXTELL, *Proctor for Libellants.*

BURLINGHAM, MONTGOMERY & BEECHER,  
*Proctors for Claimant.*

15 AUGUST JOHANSON, being duly sworn, testifies as follows:

Direct examination by Mr. Axtell:

Q. What is your name?

A. August Johanson.

Q. Where do you live?

A. Seamen's Institute; 25 South Street.

Q. You are going to sea, are you?

A. Yes.

Q. Are you an able-bodied seaman?

A. No.

Q. Were you on the ship Rhine?

A. Yes, I am from the Rhine.

Q. Did you make a trip on her?

A. Yes.

Q. How much a month?

A. Twenty-five dollars a month.

Q. You shipped at Buenos Ayres?

A. Yes.

Q. Who shipped you there?

A. Benson.

Q. Who does he work for?

A. Willy Moore.

Q. You signed before the consul?

A. Yes.

Q. You took an advance?

A. We signed for \$25.00 advance, but we didn't get it.

Q. Did you sign your name to something?

A. Yes.

Q. What was it?

A. It was a ticket from the shipping master.

Q. Did you get that money at New York?

A. No.

Q. Did you get it down there?

A. No.

Q. Did you owe any board or lodging?

A. No.

Q. Did you know that you would not get the \$25.00 when you signed down there?

A. No.

Q. When did you expect to get it?

A. On board.

Q. Who did you think was going to give it to you?

A. The captain.

- Q. Did you ask him for it?  
A. No. We went right out to sea when we got on board.
- 16 Q. Had you been on the ship before you went to the consul's office.  
A. No.  
Q. Did you go to sea the same day you signed?  
A. No, the day after.  
Q. You signed on Saturday?  
A. Yes.  
Q. You stayed where that night?  
A. In my home.  
Q. What is your home?  
A. The German Sailor Home.  
Q. Are you a German?  
A. Yes.  
Q. You are claiming waiting time until you are paid your wages.  
Is that right?  
A. Yes.  
Q. You signed your name to the libel here the other day?  
A. Yes.  
Q. Do you know how many other men there were who signed and have claim for this advance?  
A. About eleven.  
Q. Do you know Herman Gustant?  
A. Yes.  
Q. Willy Richardt?  
A. Yes.  
Q. John Oettler?  
A. Yes.  
Q. August Johanson?  
A. That's me.  
Q. Christensen?  
A. Yes.  
Q. Frank Novy?  
A. Yes.  
Q. August Jacobston?  
A. Yes.  
Q. Paul Neilson?  
A. Yes.  
Q. Otto Coke?  
A. Yes.  
Q. Did they all sign down there at the same time?  
A. No, some of them came on board after.  
Q. You were not at the pier?  
A. No.  
Q. Weren't they afraid you would get away?  
A. We can't get away.  
Q. Did these men all sign tickets before the shipping master?  
A. Yes.  
Q. Did you see them?  
A. Yes.

- Q. Do you know whether they got their money down there at the shipping commissioner's office?

17 A. Yes.

Q. Did they get the \$25.00?

A. No.

Q. Were they all signed on at the same rate of pay? \$25.00 in advance?

A. Yes.

Q. And they didn't get it?

A. No.

Cross-examination.

By Mr. Hupper:

Q. Where were you born?

A. Hamburg, Germany.

Q. How long is it since you have been there?

A. 14 years.

Q. You haven't been there for fourteen years?

A. No. I have been away from Hamburg three and a half years.

Q. How old are you?

A. Eighteen and a half.

Q. What other vessels were you on before the Rhine?

A. A German vessel.

Q. What *as* her name?

A. Obotreta.

Q. Did you live there at Buenos Ayres?

A. No, at Valparaiso.

Q. Then you went down to Buenos Ayres?

A. Yes.

Q. Did you stay in Buenos Ayres?

A. No, I went on a German steamboat there.

Q. What was her name?

A. Genfeld.

Q. Then did you stay on her until you went on the Rhine?

A. Then I worked ashore a couple of months and then I came on the Rhine.

Q. Did you live ashore?

A. Yes.

Q. Where?

A. At the German Sailors' Home.

Q. And have you been there since you shipped on the Rhine?

A. Yes.

- 18 Q. How did you happen to go for this shipping master?

A. I met him on the street one day.

Q. What was his name?

A. His name is Benson.

Q. It wasn't Moore?

A. He was a runner for Moore.

Q. Did you know him before?

A. No.



Q. He just asked you if you wanted a job?

A. Yes.

Q. And what did you say?

A. I said "if I can get a job, I want to get away from this place."

Q. And what did he say?

A. "You can get a job if you come to me" and I said "I will come."

Q. Then what did he say?

A. "Come to me tomorrow morning at ten o'clock."

Q. How many days was that before you went on the Rhine?

A. One day before.

Q. And you went there. And what did he say then?

A. We went to the consul.

Q. Where did you sign this advance note?

A. In his home.

Q. What did he say to you when he asked you to sign it?

A. If we want to sign for \$25.00 a month wages and \$25.00 advance.

Q. And you did sign a ticket?

A. Yes.

Q. Would you recognize your signature if you saw it? Would you remember where you signed it if you could see the signature?

A. No.

Q. Just come here. Is that your signature?

(Witness identifies his signature on ticket dated Buenos Ayres, 7/10/16.)

(Claimant's Exhibit A for identification.)

19 Q. And then you went to the consul's after that?

A. Yes.

Q. And you signed on the articles before the consul?

A. Yes.

Q. Can you read?

A. Not very proper.

Q. You can read though?

A. Yes.

Q. Can you write?

A. Yes.

Q. Just come here again. Are these the articles you signed before the consul?

A. Yes.

Q. Will you point out your name?

A. (Witness indicates name "August Johanson" on Page 4 of articles, opposite No. 39.)

Q. You signed your name on there before the consul?

A. Yes.

Q. And all the rest of them did the same?

A. Yes.

Q. Now, what did the consul tell you?

A. He showed us that ticket that we write at Willy Moore's house and ask us if we sign it.



Q. Did he ask each one of you that?

A. Yes.

Q. And what did you say?

A. "Yes."

Q. And did the others all say "Yes?"

A. Yes.

Q. And then what did the consul say?

A. That we have to write the name on this papers.

Q. Did he put the figures down here on the articles after he said to sign the advance note?

A. No.

Q. When did you see the consul write this?

A. Before he wrote our name.

Q. And did everybody else do it the same way?

A. Yes.

By Mr. Hupper: I ask to have these articles marked Claimant's Exhibit B.

20 Q. What day were you shipped off before the shipping commissioner here?

A. 28th of December.

Q. And where are you staying now?

A. Seamen's Institute.

Q. Did you sign anything before the shipping commissioner here?

A. Not yet.

Q. Did you get any money?

A. Yes.

Q. How much?

A. \$38.00.

FRANK NOVAK and LUCAS ZUVIY, being duly sworn, testify as follows:

The witness, Frank Novak, identifies advance ticket he signed at Buenos Ayres; admits his signature, and it is marked Claimant's Exhibit C.

The witness, Lucas Zuvij, identifies advance ticket he signed at Buenos Ayres, dated October 13, 1916.

It is stipulated that all the libellants signed the articles; that an advance of one month's wages appears to have been made to each one at Buenos Ayres, according to the articles; and it is a conceded fact for the purposes of this case that said wages were paid to the seamen by means of advance notes prior to the time earned.

It is further stipulated that there is a receipt attached to the articles bearing the signature of each of the libellants herein for one month's wages which reads as follows:

"Buenos Ayres, July 10, 1916.

21 Received of Mr. P. Frederickson the sum of \$25.00 for services *rented* (rendered) on board the American ship Rhine, \$25.00, U. S. gold. CARL CHRISTIANSEN."

The names on the receipts appear to be as follows:

M. Uthorpe.  
August Jacobston.  
Carl Christiansen.  
August Johanson.  
Herman Geistent.  
Lucas Zuivy.  
F. Novak.  
Willie Richardt.  
Paul Neilsen.  
Otto Coch.  
John Ottboe.

All of the receipts are in similar form and all bear date of July 10, 1916, except Otto Coch, F. Novak and Lucas Zuivy, which are dated October 13, 1916.

It is further stipulated that all the witnesses will testify that they signed articles about the ninth of October, and that they went aboard the ship on the tenth of October, and that said vessel sailed from said port a few days thereafter.

Lucas Zuivy testifies that he paid 150 pesos, or about \$60.00, to a shipping master to get the job in addition to the month's wages, and that he was told that he would be paid his full wages without any month's advance deduction, and that he owed no board or lodging to anybody at the time.

22

*Opinion.*

United States District Court, Eastern District of New York.

May 25, 1917.

PAUL NEILSEN et al.

vs.

SAILING SHIP "RHINE."

JOHN HARDY et al.

vs.

BARKENTINE "WINDRUSH."

Silas B. Axtell, for Libellants.

Burlingham, Montgomery & Beecher (Roscoe H. Hupper), for Claimants.

In the first case Paul Neilsen and nine other seamen sue for the recovery of wages claimed to be due them from the bark Rhine. It appears that they shipped on the American bark Rhine, at Buenos Ayres, Oct. 7, 1916, for a voyage to New York, at the rate of \$25 per month. It is stipulated that the shipping of seamen on sailing vessels at Buenos Ayres is controlled by certain shipping masters, to one of whom the libellants, in accordance with the usual custom

and as a means of securing employment, signed a receipt or advance note for one month's wages. These advance notes were presented to the American Vice-Consul at Buénos Ayres before the

23 libellants signed the articles, were by him noted on the articles and, in the presence of the libellants, directed to be paid on account of the wages of the respective libellants. It was further stipulated that in directing the master of the Rhine to honor such advance notes, the Consul was acting in accordance with Section 237 of the Consular Regulations of the United States. When the bark arrived at New York the libellants were paid the wages earned, less the \$25 advanced. They now seek to recover the sum thus deducted, by virtue of the terms of Section 10 (a) of the Act of March 4, 1915, entitled "An Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States," which declares such advances to be unlawful and of no effect.

The facts in relation to the case of the Barkentine Windrush differ from the above only in respect of the fact that the advance notes are not in evidence, but are noted on the articles.

The sole question involved is whether the statutory provision referred to applies to advances made by American vessels in foreign ports. The original enactment prohibiting advances dates from 1884 (Act of June 26, 1884, c. 121, §10). It was amended three times between that date and the Act of March 4, 1915 (namely, by the Act of June 19, 1886, c. 421, §3; the Act of Dec. 21, 1898, c. 28, §24; the Act of Apr. 26, 1904, c. 1603, §1), but without material change in any respect here involved.

In *Patterson v. Bark Eudora*, 190 U. S., 160, the Supreme Court of the United States held, in 1903, that the prohibition applied to advances made by a foreign vessel in an American port.

24 But there have been only two cases since the original enactment in 1884 which cover the issue now raised. In 1884 Judge Addison Brown held in the State of Maine, 22 Fed., 734, that this section did not apply to advances made by an American vessel within a foreign jurisdiction. On the other hand, Judge Ervin, sitting in the Southern District of Alabama, has recently held in *Koskinen v. The Imberhorne* (not yet reported) that the section applies to advances made in foreign ports (even by foreign vessels). It would serve no useful purpose to recapitulate the particular considerations urged in support of the opposing conclusions. The arguments in support of one construction of the statute are not susceptible of a conclusive answer by the advocate of an opposing construction; a final conclusion can be based only upon a preponderance of the considerations which serve to disclose the intent of Congress. I shall hold that the statutory provision in question applies to the situation presented here, and that the advances in issue, although made in a foreign port, having been made by vessels of the United States, were unlawful and may be recovered by the seamen.

Decree for libellants in each case, with costs, for the amount of the advance payments deducted. Under the circumstances the claim to the penalty specified in U. S. Rev. St., Sec. 4529, is denied.

VAN VECHTEN VEEDER, U. S. J.

25

*Final Decree.*

At a Stated Term of the United States District Court Held in and for the Eastern District of New York, at the Post Office Building, in the Borough of Brooklyn, City of New York, on the 3rd Day of September, 1917.

Present: Hon. Thomas I. Chatfield, District Judge.

PAUL NEILSEN et al., Libellants,

against

SAILING SHIP "RHINE," Her Tackle, Apparel, etc.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the proctors for the respective parties, and due deliberation having been had and the Court having filed its opinion, it is now

Ordered, adjudged and decreed, by the Court, that the libellants recover against the sailing ship Rhine, her tackle, apparel, etc., and J. E. Warden, owners, the sums set opposite their names, as follows:

Paul Nielsen .....	\$25.00
Herman Gustent .....	25.00
Willy Richardt .....	25.00
John Settler .....	25.00
26 August Johnson .....	25.00
Carl Christiansen .....	25.00
William Oethoog .....	25.00
Frank Novey .....	25.00
August Jockobites .....	25.00
Otto Koch .....	25.00,

together with costs and disbursements, taxed in the sum of \$35.60, making, in all, the sum of \$285.60, and that the said sailing ship Rhine be condemned to pay the same, and it is

Further ordered, that unless an appeal be taken from this decree within ten days, the time limited by the rules and practice of this court, the stipulators for costs and value on the part of the claimant of the said sailing ship Rhine do cause the engagements of their stipulators to be performed, or show cause within four days after the expiration of said time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands for the amount of their said stipulations.

Enter,

THOMAS I. CHATFIELD, D. J.

27

*Notice of Appeal.*

United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,

against

BARK "RHINE," RHINE SHIPPING COMPANY, Claimant.

SIRS: Please take notice that the claimant herein hereby appeals to the United States Circuit Court of Appeals, Second Circuit, from the final decree in the above action, entered in the office of the Clerk of the United States District Court for the Eastern District of New York on the 19th day of June, 1917, and from each and every part of said decree.

Dated, New York, September 20, 1917.

Yours, etc.,

BURLINGHAM, MONTGOMERY &amp; BEECHER,

*Proctors for Claimant.*

27 William Street, Borough of Manhattan, City of New York, N. Y.

To: Silas B. Axtell, Esq., Proctor for Libellant, 1 Broadway, New York City; Percy G. B. Gilkes, Esq., Clerk, U. S. District Court, Eastern District of New York, Brooklyn, N. Y.

28

*Assignments of Error.*

United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,

against

BARK "RHINE," RHINE SHIPPING COMPANY, Claimant.

The claimant, Rhine Shipping Company, hereby assigns error in the final decision and decree of the District Court:

1. In that the Court held that section 10 (a) of the Act of March 4, 1915, prohibited the payment of advance wages to the seamen within the territorial jurisdiction of the Argentine Republic.

2. In that the Court held that the wages paid in advance at Buenos Ayres were unlawfully paid and could be recovered by the libellants.

3. In that the Court did not hold that the libellants had been paid their full wages and were entitled to no recovery in this suit.

4. In that the Court made a decree in favor of the libellants.

5. In that the Court did not dismiss the libel.

BURLINGHAM, MONTGOMERY &amp; BEECHER,

*Proctors for Claimant.*



29

*Stipulation as to Record.*

United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,  
against

BARK "RHINE," RHINE SHIPPING COMPANY, Claimant.

It is stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled suit, as agreed on by the parties.

Dated, New York, October —, 1917.

SILAS B. AXTELL,  
*Proctor for Libellants.*BURLINGHAM, MONTGOMERY & BEECHER,  
*Proctors for Claimant.*

30

*Clerk's Certificate.*

United States District Court, Eastern District of New York.

PAUL NEILSON et al., Libellants,  
against

BARK "RHINE," RHINE SHIPPING COMPANY, Claimant.

I, Percy G. B. Gilkes, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing is a true transcript of the record of the District Court in the above entitled suit as agreed on by the parties.

In testimony whereof I have caused the seal of the said Court to be affixed at the City of New York this — day of October, in the year of our Lord, One thousand nine hundred and seventeen and of the Independence of the United States the One hundred and forty-second.

PERCY. G. B. GILKES, *Clerk.*

17

31 United States Circuit Court of Appeals for the Second Circuit,  
October Term, 1917.

Nos. 160-161.

Argued January 23, 1918; Decided February 14, 1918.

Before Ward and Hough, Circuit Judges, and Learned Hand, District  
Judge.

JOHN HARDY et al., Libellants-Appellees,

v.

BARKENTINE "WINDRUSH," Her Tackle, etc., SHEPARD & MORSE  
LUMBER COMPANY, Claimant-Appellant.

PAUL NEILSON et al., Libellants-Appellees,

v.

SAILING SHIP "RHINE," Her Engines, etc., RHINE SHIPPING COM-  
PANY, Claimant-Appellant.

Appeals from the District Court of the United States for the Eastern  
District of New York.

Appeals in Admiralty from Decrees Entered in District Court for the  
Eastern District of New York.

Both the craft named are vessels of the United States, within the  
meaning of that phrase as used in the statutes affecting ships  
32 and seamen. In 1906 both were at Buenos Ayres, the Wind-  
rush in May and the Rhine in October; both wanted crews,  
and neither could get one (as is stipulated in writing) "except by  
agreeing to pay one month's wages in advance." This means, as is  
fairly shown by evidence, that the keepers of sailors' boarding houses,  
commonly known as "crimps" have in that port such control of sea-  
men, that no master can get a crew except by applying to them.

Both vessels got crews through a crimp; of the men shipped some  
had actually stayed with the boarding master, or obtained supplies  
from him or both; others had merely gone to him as a means of find-  
ing employment; all however were treated alike, viz: taken before the  
United States Consul, and signed on the articles, each man giving to  
the boarding master an advance note for one month's wage, the pay-  
ment of which was duly noted. All the men so shipped knew what  
they were doing, and apparently regarded it as the custom of the  
port and common incident of their trade; so undoubtedly did the  
master; nor is there any evidence that the captain or owner profited  
directly or indirectly by the transaction. They or their agents paid  
the advance notes before the ship left Buenos Ayres.

On arrival at New York, the libellants refused to recognize the charges or deductions, and brought suit for a month's pay apiece, as for so much wages wrongfully withheld. The court below awarded the amount claimed, and claimants took these appeals,—which were argued together, the questions raised being identical.

Roscoe H. Hupper, for Appellants.  
 Silas B. Axtell, for Appellees.

HOUGH, C. J.:

The facts of these cases are in all material aspects those recited in The State of Maine, 22 F. R., 734. Judge Addison Brown there gave judgment as to whether the then Seaman's statute, commonly known as the Dingley Act (June 26, 1884; 23 Stat., 55) entitled libellants such as these to a recovery; the present question is whether (assuming the correctness of the decision cited) more recent legislation, commonly known as the La Follette Act (March 4, 1915; 38 Stat., 1168) requires a different ruling.

The material words of the statutes may be put in parallel thus (some immaterial phrases being omitted or shortened):

1884.

It is hereby made unlawful to pay any seaman wages before leaving the port at which he may be engaged, in advance of the time when he has actually earned the same, or to pay such advance to any other person, or to pay any remuneration, (to one not authorized by Act of Congress) for shipment of seamen.

Any person paying advance wages, or such remuneration shall be deemed guilty of a misdemeanor, and punished by fine and (at option of the court) imprisonment.

The payment of such advance wages, or remuneration, shall in no case absolve the vessel from full payment of wages after they shall have been earned, and be no defence to a libel for recovery of wages.

34

This section shall apply as well to foreign vessels as to vessels of

1915.

It is hereby made unlawful to pay any seaman wages in advance of the time when he has actually earned the same, or to make any order or note therefor to any other person or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages.

Any person violating the foregoing shall be deemed guilty of a misdemeanor and punished by fine, and (at option of the court) imprisonment.

The payment of such advance wages on allotment shall in no case absolve the vessel from full payment of wages after they shall have been earned and shall be no defence to a libel for recovery of wages.

If any person shall receive from any seaman any remuneration

the United States, and any foreign vessel violating the same shall be refused a clearance.

ation for providing him with employment, such person shall be deemed guilty of a misdemeanor and punished with fine or imprisonment.

This section shall apply as well to foreign vessels, while in waters of the United States, as to vessels of the United States, and any foreign vessel violating the same shall be refused a clearance.

The master, &c., of any vessel (domestic or foreign) seeking clearance from a port of the United States shall present his shipping articles at the office of clearance,—and none shall be granted unless the provisions of this article have been complied with.

The case of the State of Maine held that this portion of the statute of 1884 had no application to the employment of seamen by American vessels in foreign ports. That it was well decided we have no doubt, agreeing as we do with the reasons assigned, and considering the intellectual authority of a decision by that Judge of the highest.

The State Department, which through the Consuls, is charged with oversight of shipment of seamen abroad, accepted the ruling, and embodied it (with due reference to the decision) in the Consular Regulations, Sec. 237,—nor did the passage of the Act of 1915 produce any change in departmental instructions; what governed the action of the Consul at Buenos Ayres, when these libellants were shipped, was the rule of The State of Maine.

35 The only other interpretation of the Dingley Act thought instructive here is *The Eudora*, 190 U. S., 169, holding the statute applicable to foreign vessels in American ports, mainly on reasoning more elaborately set forth in *Wildenhuis* case, 120 U. S., 1, i. e. that any vessel and those on board her are subject to the civil and criminal law of the country into whose ports they come,—such subjection is one of the implied conditions of entry, which is a favor and not a right.

Unless there has been a change in the legal content of the statute, its interpretation must remain unchanged. So far as the language above given is concerned, there is but one change that can be relied on, i. e. that the application of the act to foreign vessels is expressly limited to waters of the United States, from which it is argued that the application to domestic vessels must be universal.

Of this it may be said, that by the same train of reasoning, some significance must be given to the section regarding clearances, in respect of which for domestic ships, the Act of 1884 said nothing; must it then follow that prior to 1915 vessels of the United States

violating the statute were necessarily entitled to clearance? Such a contention could not be made.

Indeed the argument for libellants proceeds mainly and frankly on the ground that the Act of 1915 is in its entirety so obviously remedial, that by it the status of seamen has been so radically changed, and the rigidity of their engagements so greatly relaxed, that it must have been intended to make the statute extraterritorially operative, and uplift sailors by putting on their employers the cost of a rascally way of doing business, over which this country has no direct jurisdiction.

Undoubtedly the methods of shipment exhibited in this record are vile, and it may be admitted as within legislative power to improve the social customs of a contract breaker, by encouraging the act of breach; but we are bound by what Congress did as expressed in the words employed, having recourse for that purpose to "the whole context of the statute" (Johnson vs. Southern Pacific Co., 36 196 U. S., 1), and this is true even when the law is both remedial and penal, but with the "design to give relief more dominant than to inflict punishment."

We find no words in the entire act rendering the particular kind of relief here sought, certainly within the legislative intent or meaning. We have not before us any reports of congressional committees, which however may be consulted only to ascertain motive (McLean vs. United States, 226 U. S., 374).

There are however some rules of law which the legislature must have intended by the words of this act to overset, if the libellants are entitled to a decree.

This is an amendment to existing law, and the presumption is that the same words used therein have the meaning acquired by prior judicial construction (United States vs. Trans-Missouri Ass'n, 58 F. R., at 67). In every doubtful case, contemporaneous (Houghton vs. Payne, 194 U. S., 88) and departmental (United States vs. Cerecido & Co., 209 U. S., 337) construction is entitled to weight, when the words of a statute get before a court. That the present act is remedial is admitted, so was that of 1884, but both are also plainly penal. That remedies of the kind here demanded by libellants are more in favor now than in 1884, is true enough; but words have not necessarily changed their ordinary meaning, and the rules of statutory construction remain unaltered. The remedial and penal portions of the part of the statute under consideration cannot be separated, if what these ship masters did in Buenos Ayres was not lawful, it was unlawful, and a misdemeanor was committed. If it be possible now and in this country to enact a law making a crime of something done by an American citizen in a foreign land (Rex vs. Sawyer, 1 C. & K., 101) every and the strongest presumption is against such construction (American, & Co. vs. United Fruit Co., 213 U. S., 347).

The absurdity of considering the ship captains indictable is not denied; therefore the contention becomes this, that this executed contract must be set aside, because the statute in effect declares it repugnant to the "policy and morality" of the people of the United States.



37 We discover no consensus on this point of morals in the written law, there is no evidence on the subject, and the rule appealed to, ordinarily affects only executory contracts. The situation here is this, libellants demand a part of their wages in accordance with the law of the United States; respondents answer,—we paid you that part in Argentine in accordance with the law of that country; libellants reply the law of the United States refuses to recognize that lawful and completed transaction. For so extreme a doctrine support can be found only in plain unquestioned legislative order; and such order cannot be discovered in this statute.

In *The Eudora* and *State of Maine* (*supra*) a subsidiary reason for the harmonious construction there given to the Act of 1884, was that the announced rulings put foreign and domestic vessels on the same footing. That doctrine also was presumptively before Congress in passing the later statute. The ruling made below gives foreign vessels an advantage, certainly if (e. g.) the voyage is from one foreign port to another. No intent to do this is perceivable in the Act.

We have not overlooked *The Imberhorne*, 240 F. R., 830, and *The Talus*, 242 F. R., 954. In so far as they do not harmonize with the foregoing, we differ.

Decree reversed, and causes remanded with directions to dismiss the libels.

38 United States Circuit Court of Appeals for the Second Circuit,  
October Term, 1917.

Nos. 160-161.

Argued January 23, 1918; Decided February 14, 1918.

Before Ward and Hough, Circuit Judges, and Learned Hand, District Judge.

JOHN HARDY et al., Libellants-Appellees,

v.

BARKENTINE "WINDRUSH," Her Tackle, etc., SHEPARD & MORSE  
LUMBER COMPANY, Claimant-Appellant.

PAUL NEILSON et al., Libellants-Appellees,

v.

Sailing Ship "RHINE," Her Engines, etc., RHINE SHIPPING COM-  
PANY, Claimant-Appellant.

Appeals from the District Court of the United States for the Eastern  
District of New York.

LEARNED HAND, D. J. (dissenting):

If Section 10 (a) had not been amended in the clause here in question, I should have felt bound by the construction which Judge

39 Brown had put upon it in *The State of Maine*, 22 Fed. R. 903, under the well-settled rule that a prior accepted interpretation of the statute is incorporated into its reenactment. Moreover, I think that Judge Brown's decision was certainly right at the time he made it. His fourth reason for excluding American ships from the operation of the statute while in foreign ports seems to me to be unanswerable. The statute did not discriminate, as he says, between foreign vessels and those of the United States and it was necessary to give the general language of the statute the same application to one class as to the other.

Under that statute not only did Judge Brown hold that vessels of the United States were controlled only while here, but the Supreme Court in *Patterson v. Bark Eudora*, 190 U. S., 169, held that foreign vessels were bound, and obviously only while here. There was therefore not the slightest reason when amending the statute to add the clause, "while in waters of the United States," in order to provide the necessary limitation. Furthermore, I attach significance to the direct conjunction of the limiting clause with the phrase, "foreign vessels." If the statute had read "as well to foreign vessels as to vessels of the United States, while in the waters of the United States," there could have been no doubt, but the limitation by its position directly affecting one class seems to me to give the other its general meaning, unless there was good contrary reason in the context.

I can see no reason in the context for such a limitation. Of course it results in some extra-territorial operation of the statutes, but only as regards vessels of the United States and we are used enough to statutes which assume to do that. It would not strain the interpretation of a statute to make it apply to any act done on board ship. It is true, these acts were done ashore, but they were to engage crews who should perform all their services in a United States ship; they were a condition upon those services and touched them as closely as possible. When performed by an American master, at least, not to consider an owner, no valid distinction in the purpose of the statute seems to me to be found in the locus of the act. The penalties  
40 against "crimps" in foreign countries stand upon a different footing; they are not associated with United States vessels and subject normally to the laws of the United States.

Again it is said that the provision making compliance with the statute a condition on clearances shows an intention to limit the application of the statute. Yet this touches only the remedy, and it would be a hard rule which limited the substance, because the remedy could not in the nature of things be coextensive with its general application. No inference seems to me justified from such a consideration.

Finally, the claimant insists that it puts United States vessels at a disadvantage in foreign ports. In such countries as do not protect their seamen against this form of exploitation, this is doubtless true, but the provision itself presupposes that the seamen are at an economic disadvantage. The initiative in all such efforts to impose a standard of wages bears at first against local industry. If it is not undertaken, all remedies must wait till other nations join. Granted

the supposed injustice of the practice, the ships or the men must therefore suffer till the evils of the practise get general recognition. The incidental burden on trade may conceivably not have been thought of equal moment with the putative welfare of the crews. In any case it seems to me that such considerations are beyond the proper cognizance of courts of law. Surely we have no right to assume that the interest of the state depends more upon the welfare of one of these conflicting economic classes than the other.

I dissent.

41 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court-rooms in the Post Office Building in the City of New York, on the 25th Day of February, One Thousand Nine Hundred and Eighteen.

Present: Hon. Henry G. Ward, Hon. Charles M. Hough, Circuit Judges; Hon. Learned Hand, District Judge.

PAUL NEILSON et al., Libellants-Appellees,

v.

SAILING SHIP RHINE, Here Engines, etc., RHINE SHIPPING COMPANY, Claimant-Appellant.

Appeal from the District Court of the United States for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is reversed with costs and cause remanded with instructions to dismiss the libel.

H. G. W.

C. M. H.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

42 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Paul Neilson et al., v. Ship "Rhine." Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 25, 1918. William Parkin, Clerk.

43 UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing

pages, numbered from 1 to 42 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Paul Neilson et al., against Sailing Ship "Rhine" as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 21st day of March, in the year of our Lord One Thousand Nine Hundred and Eighteen and of the Independence of the said United States the One Hundred and forty-second.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk*.

44 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Sailing Ship "Rhine," Rhine Shipping Company, Claimant, is appellant, and Paul Nielsen et al. are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Eastern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you

45 that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the third day of April, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,

*Clerk of the Supreme Court of the United States.*

[Endorsed:] File No. 26403. Supreme Court of the United States, October Term, 1917. No. 936. Paul Nielsen et al., vs. Rhine Shipping Company, Claimant of Sailing Ship "Rhine." Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 8, 1918. William Parkin, Clerk.

46 United States Circuit Court of Appeals for the Second Circuit,

PAUL NIELSEN et al., Libelants-Appellees,

against

SAILING SHIP "RHINE" and RHINE SHIPPING COMPANY, Claimants-Appellants.

It is hereby stipulated, by and between the proctors for the respective parties hereto, that the transcript of record on file in the office of the clerk of the United States Supreme Court, may be taken as a return to the writ of certiorari in the above entitled action.

Dated, New York, April 8th, 1918.

S. B. AXTELL,

*Proctor for Libelants-Appellees,*

BURLINGHAM, VEEDER, MASTE &  
FEARY,

*Proctor for Claimant-Appellants.*

47 To the Honorable the Supreme Court of the United States,  
Greeting:

The record and all proceedings whereof mention is within made, having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, April 9th, 1918.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,

*Clerk of the United States Circuit Court  
of Appeals for the Second Circuit.*

48 [Endorsed:] 936/26403. United States Circuit Court of Appeals, Second Circuit. Paul Nielsen et al. v. "Rhine." Return to Certiorari.

49 [Endorsed:] File No. 26403. Supreme Court U. S., October Term, 1917. Term No. 936. Paul Nielsen et al., Petitioners, vs. Rhine Shipping Company, Clmt., etc. Writ of certiorari and return. Filed April 15, 1918.